

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

GEORGE HUGHES,  
Petitioner,

vs.

WARDEN, CHILLICOTHE  
CORRECTIONAL INSTITUTION,  
Respondent.

Case No. 1:21-cv-246

Cole, J.  
Litkovitz, M.J.

**REPORT AND  
RECOMMENDATION**

This habeas corpus action is currently before the Court on petitioner's motion for summary judgment. (Doc. 13). For the reasons stated below, it is recommended that the motion be denied. On January 5, 2022, the Court issued an Order administratively staying this habeas corpus action so that petitioner could exhaust his state court remedies. (Doc. 10). Petitioner filed a motion to reinstate the case on June 14, 2022. (Doc. 11). On October 20, 2022, the Court issued a Report and Recommendation, recommending that petitioner's motion to reinstate the case to the Court's active docket be granted. It was further recommended that respondent be ordered to file a return of writ within sixty (60) days. (Doc. 12).

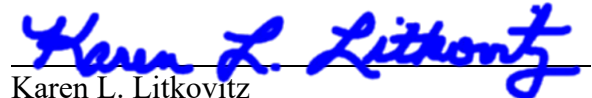
On December 27, 2022, during the pendency of the Report and Recommendation, petitioner filed a motion for summary judgment. (Doc. 13). Although styled as a motion for summary judgment, the motion is in substance one for default judgment premised on petitioner's allegation that respondent failed to file a timely return of writ. *See* Fed. R. Civ. P. 55. Petitioner claims that respondent was ordered to file a return of writ by December 19, 2022—within sixty (60) days of the October 20, 2022 Report and Recommendation—and failed to do so. (*Id.* at PageID 316). On this basis, petitioner claims his motion should be granted. (*Id.* at PageID 317).

Petitioner's motion is without merit. While the Court's October 20, 2022 Report and

Recommendation included a recommendation that respondent be ordered to file a return of writ within sixty (60) days, the Report and Recommendation was not adopted by the District Judge until January 6, 2023. At that time respondent was Ordered to file a return of writ within sixty (60) days. On March 7, 2023, respondent filed a timely return of writ (Doc. 17), to which petitioner has replied. (Doc. 18). Accordingly, because respondent has filed a timely return of writ, petitioner's motion (Doc. 13) is without merit and should be **DENIED**.

**IT IS SO RECOMMENDED.**

Date: 8/9/2023

  
Karen L. Litkovitz  
United States Magistrate Judge

#### **PROCEDURE ON OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*,

474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).